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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,851	12/04/2003	Jennifer Appel	020208-00300	7926
22904	7590	05/31/2005	EXAMINER	
LOCKE LIDDELL & SAPP LLP			NGUYEN, SON T	
600 TRAVIS			ART UNIT	
3400 CHASE TOWER			PAPER NUMBER	
HOUSTON, TX 77002-3095			3643	

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/727,851	APPEL, JENNIFER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Son T. Nguyen	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*HC*

### DETAILED ACTION

1. Newly submitted claim 20 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim 20 is a process for watering which can be practiced by another materially different apparatus or by hand.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 20 has been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-9,12-15,18,19** are rejected under 35 U.S.C. 102(b) as being anticipated by Ware (US 3772827).

For claim 1, Ware teaches a self-contained planter system comprising a water retaining box 20; an elevated first soil retaining box 26,25,50 disposed above at least a portion of the water retaining box and having a quantity of soil dispersed across the box (the soil are in each of those pots and since the pots are dispersed across the box, the soil in the pots are dispersed too); and a drain portal 35 in a lower portion of the soil

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retaining box and above at least the portion of the water retaining box, and adapted to drain into the water retaining box.

For claims 2 & 3, Ware teaches an elevated second soil retaining box 26,25,50 disposed above the first box and a drain portal 35 disposed in a lower portion of the second box, the drain portal of the second box being disposed above the first box and adapted to drain into the first box (see fig. 3).

For claim 4, Ware teaches a pump 21 coupled to the water retaining box.

For claim 5, Ware teaches a light 12 mounted above the soil retaining box.

For claim 6, Ware teaches a plurality of elevated soil retaining boxes 26,25,50, wherein the light 12 is below at least one of the boxes.

For claim 7, Ware teaches at least one of the soil boxes has an adjustable elevation (the brackets 14 are adjustable, thus, moving the soil boxes as desired, see col. 2, lines 61-62) relative to the water box.

For claim 8, Ware teaches a columnar support 11 for the soil box.

For claim 9, Ware teaches a structural bollard 16 coupled to the columnar support.

For claim 12, Ware teaches plants planted in the soil retaining box.

For claim 13, Ware teaches a self-contained planter system comprising a water retaining box 20; elevated soil retaining boxes 25,26,50; a water line 22; a pump 21; a light 12. See also the claims explanation in the above.

For claim 14, see claim 8.

For claim 15, see claim 9.

For claim 18, see claim 7.

For claim 19, Ware teaches wherein the second soil retaining box is adapted to allow water to drain through.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 10 & 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ware (as above) in view of Morris et al. (US 5216836).

Morris et al. teach a self-contained planter system comprising a control panel 16. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a control panel as taught by Morris et al. in the system of Ware in order to automatically regulate the volume and rate of flow of the nutrient (col. 2, lines 57-60 of Morris et al.).

6. **Claims 11 & 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ware (as above) in view of FR2739253 (herein FR253).

FR253 teaches a self-contained planter system comprising an enclosure (on the left side of box 1 in fig. 1 where ref. 23 is located) formed in a water retaining box 1 and accessible from an exterior portion of the water retaining box (by removing the lid 3), the enclosure housing a drain valve 23 sealingly coupled to a water portion of the water retaining box. It would have been obvious to one having ordinary skill in the art at the

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time the invention was made to employ a drain valve in an enclosure as taught by FR253 in the water retaining box of the system of Ware in order to allow drainage of the water in the water retaining box and to provide an enclosure for the valve.

***Response to Arguments***

7. Applicant's arguments filed 3/11/05 have been fully considered but they are not persuasive.

**Applicant argued that Ware does not teach a self-contained planter system.**

Ware does teach a self-contained planter system because a person does not have to regularly water the plants on the planter system due to the pump pumping water to water all the plants and then the water drains to the bottom to recycle, thus, the Ware system is self-contained.

**Applicant argued that Ware drains water to the base of the tray accommodating only root system feeding of plants in the flower pots. In contrast, Applicant's invention allows water to drain through the drain portal of an upper soil retaining box onto the plant foliage in a lower soil retaining box to directly foliar feed the plants instead of relying just on root system feeding.**

Unfortunately, Applicant did not state that the water is to directly drained onto the plant foliage and not the roots. As stated in the claim language, "...drain into the water retaining box", "...adapted to drain into the first soil retaining box", etc.; therefore, no where in these claim language indicate that the water draining from the top box is directed onto the plant foliage. Even if such language is incorporated, the claims are not

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patentable because it is very well known to water plants either directly on the foliage or roots so it is not of a new concept to be patentable.

**Applicant argued that “bollard” in claim 9 is a term of art and is disclosed in the application as a structural member capable of withstanding, for example, a crash through a large window into an occupied area. The relatively small tie bar 16 of Ware cannot effectively be compared to a bollard of the present disclosure.**

Unless Applicant fully claimed the structure of the bollard to allow the bollard to withstand crashes, merely stating a bollard can be interpreted as a thick post (obtained from the Microsoft Basic Dictionary), or a post of metal or wood (obtained from the Merriam-Webster's Collegiate Dictionary, 10<sup>th</sup> edition). The frame structure of Ware is not relatively small tie bar as stated by Applicant, the structure of Ware as shown in fig. 1 appears to be a big metal frame or plurality of posts that can hold a plurality of flower pots.

**Applicant argued that FR253 does not appear to include an enclosure that can be accessed from an exterior portion.**

Clearly from fig. 1, the enclosure has a removable lid 3 that can be accessed from an exterior portion by a user lifting the lid from the enclosure to access the inside of the enclosure.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Son T. Nguyen



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Primary Examiner  
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